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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,824	12/26/2001	Simon Charles Martin	A34018PCT USA	9883
21003	7590	06/02/2005	EXAMINER	
BAKER & BOTTS				FARAH, AHMED M
30 ROCKEFELLER PLAZA				
NEW YORK, NY 10112				
				ART UNIT
				PAPER NUMBER
				3739

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/762,824	MARTIN, SIMON CHARLES
	Examiner Ahmed M Farah	Art Unit 3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 March 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20, 42 and 44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 14-20, 42 and 44 is/are allowed.
- 6) Claim(s) 1-9 and 11-13 is/are rejected.
- 7) Claim(s) 10 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 5-9 are again rejected under 35 U.S.C. 102(b) as being anticipated by Abe et al. U.S. Patent no. 4,993,825.

Abe et al. disclose a fixation apparatus and methods of use, the apparatus comprising: at least two elongated, substantially perpendicular, fixation targets located in the field of view of the eye so that a patient may fixate on them (see Figs. 1 and 3; and col. 2, lines 26-51).

As to claims 8 and 9, the fixation targets comprise a plurality of light emitting diodes (LEDs), the LEDs mounted on a printed circuit board.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is again rejected under 35 U.S.C. 103(a) as being unpatentable over Abe et al.

Abe et al., described above, do not teach that one elongate fixation target is longer than the other. However, the applicant's written description (see page 8, lines 26-27) teaches that the shape and/or pattern of the elongate targets are not critical to the invention. Therefore, it would have been obvious to one skilled in the art at the time of the applicant's invention to modify the shape of the elongate targets and use fixation targets in which at least one component is longer than the other as presently claimed.

Claims 11, 12 and 13 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Shimmick et al. U.S. Patent No. 5,549,597 in view of Abe et al.

Shimmick et al. disclose a laser surgical apparatus and methods of use for determining the astigmatism axis of a patient's eye and for treating the visual defects of the eye, the apparatus comprising a fixation means, ophthalmic microscope, and a laser source. However, they do not teach a fixation means comprising at least one elongate target as presently claimed.

Abe et al., described above, teach a fixation apparatus comprising at least one elongate target as claimed. Therefore, it would have been obvious to one skilled in the art at the time of the applicant's invention to modify Shimmick et al in view of Abe et al. and use a fixation target comprising at least one elongate target as an equivalent alternative eye fixation means.

### ***Response to Arguments***

Applicant's arguments filed March 14, 2005, have been fully considered but they are not persuasive. The applicant's argument failed to address the anticipation rejection

directed to Abe et al. U.S. Patent No. 4,993,825; and the obviousness rejections directed to Abe et al., and Shimmick et al. (US Pat. No. 5,549,597) in view of Abe et al. Therefore, these prior art rejections are treated as teaching the recited inventions in claims 1-9 and 11-13.

***Allowable Subject Matter***

Claims 14-20, 42 and 44 are allowed over the prior art of record.

Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

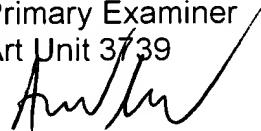
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon-Thur. 9:30 AM-7:30 PM, and 9:30 AM - 6:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M DVorak can be reached on (571) 272-4768. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ahmed M Farah  
Primary Examiner  
Art Unit 3739



May 29, 2005.